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No. 1235

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In the Supreme Court of the United States

OCTOBER TERM, 1967

REUBEN STURMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM SUGGESTING MOOTNESS

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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MEMORANDUM SUGGESTING MOOTNESS

This case arose out of a federal grand jury investigation in Cleveland, Ohio, into possible violations of federal obscenity laws. On June 9, 1967, the grand jury issued subpoenas duces tecum directed to petitioner, as an officer of five book and magazine distributing companies, for the production of various records of the companies which might tend to show pandering in the sale and preparation of publications. Petitioner moved in the United States District Court for the Northern District of Ohio to quash the subpoenas con-

tending that they were overly broad and amounted to a prior restraint on the corporations' right of free expression. The district judge narrowed the subpoenas to some extent (see Pet. 9a-11a) and sustained them as modified. Petitioner's appeal to the United States Court of Appeals for the Sixth Circuit was dismissed on the authority of *Cobbledick* v. *United States*, 309 U.S. 323, the court holding that the district court's denial of the motion to quash the grand jury subpoenas was not a final decision under 28 U.S.C. 1291.

The term of the grand jury which issued the subpoenas expired on March 29, 1968. Since the efficacy of the subpoenas ceased with the termination of the grand jury, the present controversy is moot.[1]

Therefore, the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1968.

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[1] We are advised that the United States Attorney's office in Cleveland intends to seek new subpoenas duces tecum, directed to the five distributing companies involved here, from a new grand jury to be empaneled on April 18, 1967, but that the scope of the subpoenas, in terms of the number and kind of books to which they relate, will be considerably more limited than those which were at issue here.

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